APPEAL NO. 031324
FILED JULY 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on February 25, 2003, and April 22, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant failed to timely notify her employer of an injury pursuant to Section 409.001. The claimant appealed, arguing that there is insufficient evidence to support the determinations. The claimant additionally argues that the hearing officer erred in denying her request to add an issue as requested in the claimant's response to the benefit review officer's (BRO) report. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant asserts that the hearing officer erred in denying her request to add the issue of whether the carrier was "limited to the late notice defense and precluded from raising other defenses at the [CCH]." Section 410.151(b) provides, in part, that an issue not raised at a benefit review conference (BRC) may not be considered unless the parties consent or, if the issue was not raised, the Texas Workers' Compensation Commission determines that good cause exists for not raising the issue at the BRC. At the hearing, the claimant urged reconsideration of the request and the hearing officer denied the request. The hearing officer noted on the claimant's response to the BRO that no good cause was shown to allow the addition of the issue. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7) provides that additional issues may be added by unanimous consent of the parties, and on the request of a party if the hearing officer finds good cause. We have reviewed the record and we perceive no abuse of discretion on the part of the hearing officer denying the request to add the issue. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985); Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10) and that she timely notified her employer of her claimed injury under Section 409.001. Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer noted that the claimant failed to prove by a preponderance of the evidence that she sustained an injury in the course and scope of employment and that the claimant's contention that she reported her condition as work related on the day she alleged it occurred was not credible. The hearing officer specifically found that the claimant reported an injury to her employer on March 27, 2001. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies

and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

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Veronica Lopez-Ruberto
Appeals Judge